

(1) The following six factors will be employed in determining when such fees shall be waived or reduced:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(iv) The significance of contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(2) The Executive Director, upon request, shall determine whether a waiver or reduction of fees is warranted. Requests shall be made concurrently with requests for information under § 2702.3. Appeals of adverse decisions may be made to the Chairman within 5 working days. Determination of appeals will be made by the Chairman within 10 working days of receipt.

[54 FR 3022, Jan. 23, 1989, as amended at 62 FR 55336, Oct. 24, 1997]

**§ 2702.8 Advance payment of fees; interest; debt collection procedures.**

(a) Advance payment of fees generally will not be required. However, an advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed \$250.

(b) Requesters who have previously failed to pay a fee charged in timely

fashion (i.e., within 30 days of the date of billing) may be required first to pay that amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed.

(c) Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(d) The Debt Collection Act of 1982, Pub. L. 97-365, including disclosure to consumer credit reporting agencies and the use of collection agencies will be utilized to encourage payment where appropriate.

[54 FR 3023, Jan. 23, 1989]

**PART 2703—EMPLOYEE RESPONSIBILITIES AND CONDUCT**

Sec.

2703.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

2703.2 Designated agency ethics official and alternate designated agency ethics official.

AUTHORITY: 5 U.S.C. 7301; 5 CFR 2638.202.

SOURCE: 61 FR 39872, July 31, 1996, unless otherwise noted.

**§ 2703.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.**

Members and employees of the Federal Mine Safety and Review Commission are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635; the Commission's regulations at 5 CFR part 8401, which supplement the executive branch-wide standards; and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

**§ 2703.2 Designated agency ethics official and alternate designated agency ethics official.**

The Chairman shall appoint an individual to serve as the designated agency ethics official, and an individual to serve in an acting capacity in the absence of the primary designated agency ethics official (alternate designated

agency ethics official), to coordinate and manage the Commission's ethics program.

## **PART 2704—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COMMISSION PROCEEDINGS**

### **Subpart A—General Provisions**

Sec.

- 2704.100 Purpose of these rules.
- 2704.101 Definitions.
- 2704.102 Applicability.
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- 2704.105 Standards for awards.
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### **Subpart B—Information Required From Applicants**

- 2704.201 Contents of application—in general.
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- 2704.204 Confidential financial information.
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- 2704.206 When an application may be filed.

### **Subpart C—Procedures for Considering Applications**

- 2704.301 Filing and service of documents.
- 2704.302 Answer to application.
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- 2704.304 Comments by other parties.
- 2704.305 Settlement.
- 2704.306 Further proceedings on the application.
- 2704.307 Decision of administrative law judge.
- 2704.308 Commission review.
- 2704.309 Judicial review.
- 2704.310 Payment of award.

**AUTHORITY:** (5 U.S.C. 504(c)(1); Pub. L. 99–80, 99 Stat. 183; Pub. L. 104–121, 110 Stat. 862.

**SOURCE:** 47 FR 10001, Mar. 9, 1982, unless otherwise noted.

### **Subpart A—General Provisions**

#### **§ 2704.100 Purpose of these rules.**

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called “adversary adjudications”) before this Commission. An eligible party may receive an award when it prevails over the U.S. Department of Labor, Mine Safety and Health Administration (“MSHA”), unless the Secretary of Labor's position in the proceeding was substantially justified or special circumstances make an award unjust. In addition to the foregoing ground of recovery, a non-prevailing eligible party may receive an award if the demand of the Secretary is substantially in excess of the decision of the Commission and unreasonable, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The rules in this part describe the parties eligible for each type of award. They also explain how to apply for awards, and the procedures and standards that this Commission will use to make the awards. In addition to the rules in this part, the Commission's general rules of procedure, part 2700 of this chapter, apply where appropriate.

[71 FR 44209, Aug. 4, 2006]

#### **§ 2704.101 Definitions.**

The following terms shall have the following meaning when used in these rules:

*Adjudication Officer*, as defined in 5 U.S.C. 504(b)(1)(D), means the Commission's administrative law judge who presided at the underlying adversary adjudication between the applicant and the Secretary of Labor. For the sake of clarity, references hereafter shall be to “administrative law judge”.

*The Act* means the Equal Access to Justice Act 5 U.S.C. 504;

*The Commission* means the Federal Mine Safety and Health Review Commission, created as an independent agency under 30 U.S.C. 823;